



Mold – No Longer Confined to the Refrigerator...

...has found its way out, creating a nightmare of serious health problems. The next two articles appeared on the REALTY TIMES website. Hopefully they will provide the reader with some insight to this problem plaguing many homes across the nation, including Utah.

Mold Cases Spreading, Says Real Estate Defense Attorney Robert Bass

by Blanche Evans

Nobody is to blame, yet everyone is ducking for cover because a buyer is likely to be out over \$60,000 on a problem that is no fault of her own.

An Arizona buyer, represented by her own agent, pays over half a million dollars for a home from a seller who was not the home's occupant. She accepts a buyer's inspection offered to her by the seller, which was performed at the request of a previous buyer. The buyer's agent does not recommend that the buyer get her own inspection. After moving in, the buyer ripped out the kitchen cabinets to start a remodeling project, revealing a huge, virulent mold stain. Suddenly the buyer's allergies were inflamed. Upon learning that the mold would take about \$50,000 to \$60,000 to remediate, she went to her homeowner's insurance to cover the expense. The homeowner's insurer denied coverage calling it a preexisting condition. She went to the seller, who tried to get his insurance company to cover the damage, but the coverage was declined because no one could point to an event such as a flood or a crack in the foundation that caused the mold to grow.

So the buyer sued the listing agent.

That's when real estate defense attorney Robert N. Bass stepped into the case.

"I am beginning to see an increase in court cases regarding mold," says Bass. "What concerns me most about this subject is the number of alarmists who are running around saying the sky is falling. There are people in the business of suing over mold, or remediating it. They have an interest in making this a huge issue."

That's why Bass says brokers and agents had better get used to the idea of hearing more and more about mold. "I read reports from environmental people that make you think you have to abandon the property or you are going to die. They are hysterical in tone, sometimes," says Bass. "I view mold and fungus as basically just another critter. The environment is full of critters from termites to scorpions to spiders to ants."

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Mold Cases Spreading

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What is mold and why is it a danger to you and your E & O insurer? "Mold is an opportunistic creature that likes wood as its feeding ground, and it also likes wet drywall," explains Bass. "There are all kinds of mold with varying levels of potential toxicity. Similarly, people have varying degrees of sensitivity to various types of mold. I could live in a home with mold and have no problems and someone else could walk in and immediately have trouble breathing."

That's what happened in Bass' case. He happened to personally know the hapless buyer who bought the moldy home, and knew her to be a woman of character who would not sue anyone frivolously.

"This case is a textbook example of a latent defect," says Bass. "The plaintiff happens to be very allergic to it and she wants someone to pay, but who is really at fault? The seller, real estate agents, home inspector, insurance companies, who?" "This lady has a huge problem and may wind up with no recourse at all," he adds. "But it wasn't the listing agent's fault."



The case has yet to be settled, but there are still clear lessons for the real estate community – get used to discussing mold with every buyer and seller, pronto. "I recommend that when something is an issue, and it can be a major problem in a house, it's time to add it to the list of things we talk about. Let's recommend an indoor air quality inspection to every buyer," says Bass.

In addition, Bass says to:

1. Educate yourself about these types of problems.
2. Include some basic information about mold along with other information you provide a buyer or seller.
3. Find local service specialists who can perform indoor air quality tests for buyers and sellers. Add air quality tests to the recommended list of pre-purchase inspections to be performed.
4. Look for evidence of water leakage in the past. Pay attention to musty, mildew smells.
5. Add basic disclosures about molds to your standard documents.

"Unless an agent knows there is mold, it is hard to understand how they can be held responsible," muses Bass, "But it still costs a lot of money to defend a claim."

Inspections and Brokers Can Help Prevent Mold Suits

by Blanche Evans

Apparently even million dollar paychecks can't prevent the purchase of a home with problems. According to a story featured on Law.com, Erin Brockovich (Brockovich v. Morrison Associates, No. 051037 Los Angeles Co. Super. Ct.) is one of many complainants who are suing over the spread of mold in their homes. Brockovich is the law-firm clerk and homeowner activist made famous in last year's Oscar-winning movie, "Erin Brockovich." And she may use her star-power to do for mold issues what she did for contaminated drinking water victims.

Mold is being taken so seriously as an indoor health hazard that the Environmental Protection Agency has just put up a Web page devoted to educating the public about mold and its affect on the lungs. Attorneys are also beginning to take mold seriously, too.

"Mold is where asbestos was 30 years ago," says Alexander Robertson IV, whose firm Knopfler & Robertson of Woodland Hills, California, represents Brockovich, according to the report. Robertson began representing mold clients in 1997, and now has over 1,000 mold plaintiffs. Business is so good, he has had to turn down hundreds of other cases.

What's frightening is the amount of the awards that many of these cases are getting, many over \$1 million. Agents who aren't properly protected by having their customers and clients sign waivers are at the risk of being dragged into lawsuits because they didn't protect themselves. But many agents are reluctant to put waivers in front of clients. They should.

"I'm seeing an increase in claims regarding molds," says Robert N. Bass, real estate defense attorney. "We need to add it to the list of things we talk about with buyers and sellers."

1. A product reaching the end of its life expectancy.
2. A lack of required maintenance.
3. Defects in construction when the home was originally built.

“New homes – many no more than a year old are experiencing serious, life threatening mold problems,” says Nancy Seats, president of Homeowners Against Deficient Dwellings. “Shoddy construction and defective products are contributing to this serious problem in the new homes of today. Families are suffering physically, emotionally, and financially.”

According to a recent Dateline NBC report, Brian and Lorinda Couch bought a new home from Pulte, one of the largest homebuilders in America. Relying on the homebuilder's warranty, the Couches were shocked to find that shoddy workmanship ran throughout the home, and that many items weren't covered. They were aggravated by dripping faucets, unwired appliances, un-insulated pipes that burst in 13-degree weather, and a doorway so poorly constructed it allowed rain to pour in, growing mold across the foyer. Now they've moved out of what is now an unhealthy home and are still making payments while they arbitrate the situation. A clause in their contract prohibits them from suing Pulte.

Would the Couches have been so unlucky if they had hired a broker to represent them? Like many new homebuyers, the Couches negotiated directly with the builder to save money. According to the report, "...so instead of getting an outside lawyer, they used one suggested by the company – it was cheaper. They saved a bit more money by not hiring an inspector – after all, a county inspector had just OK'd the home," said correspondent Lea Thompson.

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Div. of Real Estate home page address:
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Prevent Mold Suits

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so great in Texas, that homeowners and home inspectors alike are backing a new bill before the Texas legislature. Presented by Senator Leticia Van De Butte of San Antonio, the Texas Homebuyer Protection Act, if passed, will be the nation's first "lemon law" for homes.

Homebuyer John Cobarruvias was so upset with the worthless summary judgment that he got against his builder, that he formed a group called the HomeOwners for Better Building. He says homeowners are fed up with builders and their useless warranties. "This is the most protected industry in Texas right now," said Cobarruvias in a recent interview. "You can't touch these people. They are not licensed, not regulated, they have nothing on them and they are making a lot of money."

Both the Couches and Cobarruvias lost a lot of money by not hiring a broker or a home inspector.

Because a broker shares the liability with their customers and clients, a good broker would have insisted that the Couches get their own inspection. It wouldn't have prevented the problems in the home, but it might have opened other avenues of recourse.

Advises D'Ambrosia, "Savvy homebuyers are having newly constructed homes inspected by a professional home inspector who solely represents the buyer during the construction process. The home inspector will inspect the property during several phases of construction and will accompany the buyer at the final walk through and delivery. The home inspector who is trained and experienced in detecting construction defects is inspecting the property for poor construction practices that could be nightmares in the future."

But a good broker needs to also be able to protect his or her firm from liability by advising customers and clients to get their own air-quality and home inspections, and if they refuse, then having them sign a waiver that they were advised to do so and refused. Says attorney Bass, "There are people who are in the business of making a big deal out of mold."

Identity Theft

In a recent identity theft investigation, the Utah Division of Consumer Protection became aware that suspects are obtaining personal information from dumpsters behind businesses. While this has undoubtedly been occurring for some time, it is worth noting that the particular suspects in this case were using information obtained from a mortgage company. Apparently the mortgage company failed to shred or otherwise destroy documents containing personal information of mortgage lessees. The suspects stated that the records they obtained in the dumpster had names, addresses, dates of birth, bank account information (including names of financial institutions, account numbers, and account holder information), social security numbers, residence and mortgage history, etc. This information enabled the suspects to easily obtain credit cards via the Internet, which were then used by the suspects to purchase goods and/or services.

Please be aware that this is happening frequently! You owe it to your clients to protect their information by destroying records ready to be disposed of to prevent this type of crime from continuing to expand. Certainly we would not like to see additional losses to the organizations, nor would we like to see the individuals whose information is stolen deal with this type of tragedy.

Special thanks to the Utah Division of Consumer Protection.

Bookmark Our NEW Website Address!

The Division of Real Estate has a newly designed web page, along with a new Internet address. Please **delete our old site from your bookmarks and add:** www.commerce.utah.gov/dre.

There you will find a plethora of information, including: approved real estate forms, licensee databases (updated monthly), complaint forms, past newsletters, education information, application forms, and much more!

Experience to Become a Real Estate Broker

Many real estate agents have a desire to some day become a licensed broker. Some simply want the additional education that comes with receiving this license. Others, in a desire to enhance themselves professionally, seek out an associate broker license to exemplify the higher qualifications associated with this license. Some wish to open their own real estate or property management office, and manage others. Regardless of the reason, should you wish to become a broker, there are certain qualification requirements that you should evaluate before you enroll in a real estate school.

Administrative Rule 162-2.2.5 can be viewed on the Division website at www.commerce.utah.gov/dre. Under "Administrative Rules" you can view the specific regulations about acquiring the required experience in order to qualify for a broker's license. A discussion of some of the specific requirements may prove helpful.

Application forms are also available on our website. These forms need to be fully completed in order for the Division to process your application. An individual must document a minimum of three years **licensed** real estate experience. Some applicants wish to receive experience credit for unlicensed real estate activities. In June of 1999, the Real Estate Commission adopted a rule change, which requires that only *licensed* real estate activity count as qualified experience. Experience can only be counted when the specific transaction or property management activi-

ties are conducted under direct supervision of your principal broker. Was there a written listing contract, R.E.P.C., Agency Agreement(s), Property Management Agreement, Negotiated Lease, etc., that properly authorized you and your broker to represent the client? Are these documents available for review in your real estate office? In short, the transaction had to "run through" the real estate brokerage.

Up to one year of the three years experience requirement *may be waived* if an individual has experience in specific related activities (approved related experience categories are described in Rule 162-2.2.6). Evidence of this related experience needs to be included with your broker application in order to be considered.

A total of at least 60 experience points accumulated within the past five years before licensing is also required. The experience points schedule is found in Administrative Rule 162-2.2.5. Recurring questions regarding this schedule include the following: "Can experience points be 'split' between agents if they worked in 'groups' or 'teams'?" The answer is *maybe*. Only if the transaction documents clearly reflect each individual "group" or "team" member's contribution to the transaction. In this instance, experience points would be split.

Should you desire to become an associate broker or a principal broker, we hope this discussion helps you to understand the experience requirements. Good luck and happy selling!

Former Appraiser Sentenced in 3-County Fraud Scheme

A former appraiser was sentenced to prison Tuesday, January 15, 2002, for defrauding more than 30 people in Salt Lake, Utah and Tooele counties who were trying to refinance their homes.

Brooks Bradshaw, 33, was ordered to serve four concurrent terms of up to five years in the Utah State Prison.

The Utah Attorney General's Office said Bradshaw approached people who were facing foreclosures and told them he was the owner of a mortgage lending company and could help them get refinancing. In return, he asked for \$400 to \$1,000 to supposedly pay for credit reports and appraisals.

The Attorney General's Office's office said Bradshaw actually used the money for his living expenses and did not perform any of the promised services.

Bradshaw lost his appraisal license in 1998 for inflating property values. He pleaded guilty last year to four third-degree felony counts of communications fraud.

In addition to the prison sentence, 3rd District Court Judge Joseph Fratto ordered Bradshaw to pay full restitution to all the victims.

"This should be a reminder that people need to do some checking and find a reputable mortgage company before giving anyone money for refinancing," said Charlene Barlow, assistant attorney general.

Reprinted with permission from the Deseret News, January 16, 2002.

Tax Time – How to Take Commissions...NOT!!

At this time of year, many are looking for ways to reduce their tax liability, including real estate professionals. Real estate agents periodically tell us that tax advisors have suggested that they form a corporation to save some of their hard-earned commissions from taxation. However, if you don't form the correct type of corporation, you will be in violation of real estate licensing law.

Title 61, Chapter 2, Section 10 of the Utah Code prohibits any licensee from receiving compensation for real estate services except from the licensee's principal broker. Section 11 contains a prohibition against paying any compensation to a person not licensed under Utah law, "...except as provided by the Professional Corporation Act or the Limited Liability Company Act." [Note: Under Utah law, a corporation is considered a "person."]

Under current real estate licensing laws, the only way a sales agent or associate broker may have his real estate commission paid to a corporation is to incorporate under the "Professional Corporation Act" (Title 16, Chapter 11, Utah Code) or the Limited Liability Company Act. A Professional Corporation is a unique and specific type of corporation, reserved only for the 18 specifically identified professions such as doctors, lawyers, engineers, CPAs, real estate brokers, agents, etc. There are many differences between professional corporations and other corporations. Two of the most significant differences are: [1] Only persons who hold the license required to practice the specified profession (in our case, real estate) can be officers or stockholders (Section 16-11-6 through 9), and [2] Creating a professional corporation does not insulate the professional from liability arising out of his professional services (Section 16-11-10). The Division does not issue licenses to corporations or LLC's, but a principal broker may make the actual payment for real estate services to a PC or LLC that an agent or associate broker has created, and is also a principal of.

The relative benefits of incorporating as a professional corporation should be reviewed with your legal and tax advisors. However, you must understand that the payment of commissions to any corporate entity besides a professional corporation or LLC is grounds for licensing action against the licensee and the licensee's principal broker.

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Real Estate Disciplinary Sanctions

BAKER, GEORGE, Sales Agent, West Valley City. License granted on probationary status until his first renewal because of a history of DUI's. While his license is on probation, he will be required to disclose his history to any principal broker with whom he licenses.

BEINS, STUART D., Sales Agent, Pleasant Grove. Application for sales agent license approved on probationary status because of past misdemeanor convictions. During the probationary status, which will last until his first renewal, he must disclose that he was licensed on probationary status to any principal broker with whom he licenses.

BENSON, SHAR LYNN, Principal Broker, Shar's Realty, Roosevelt. Agreed to pay a \$500 fine and complete double the ordinary continuing education requirement, based on violating Utah Code Section 61-2-11(8) by filing a Notice of Interest against a client's real estate in order to collect real estate commission. Ms. Benson's license was on probationary status at the time of the violation. Ms. Benson maintains in mitigation that she was later vindicated in her commission claim and that she did release the Notice of Interest when directed to do so by the Division. #RE20-05-23

BLACKWELDER, DONALD L., Principal Broker, D & B Real Estate, Inc. Provo. Agreed to a 6-month probation of license beginning October 24, 2001, payment of a \$4,000 fine, and completion of the Division of Real Estate Trust Account Seminar, based on a transaction in which he participated as a principal. Mr. Blackwelder filled out a REPC indicating that \$5,000 earnest money had been received on his offer to purchase a property, although he did not in fact deposit earnest money. The offer was accepted by the seller of the property, but failed to close. When the seller did not receive the earnest money, the seller's agent filed a complaint with the Division of Real Estate. The Division conducted an audit and learned that the earnest money had never been deposited. Following the Division's audit, Mr. Blackwelder did deposit the earnest money into trust and did disburse it to the seller. #RE 33-99-05

BLAIR, WILLIAM T., JR., Certified Real Estate Instructor, Salt Lake City. Application for renewal of instructor certification denied, based on a lack of honesty and

integrity in a real estate transaction in which he acted as a principal.

BOCCHINO, DAMON, Principal Broker, Country West Realty, Inc., Clearfield. Consented to pay a \$2,000 fine, take the Division 2000 Core Course, and have his license placed on probation for one year. As an accommodation to his employer, Mr. Bocchino signed documents indicating that he was personally purchasing the existing home of sellers who were purchasing a new home from his employer. In actuality, the employer was taking the home in trade. In mitigation, Mr. Bocchino maintains that the sellers did not suffer any loss on the transaction. In further mitigation, the transaction occurred in 1996 when Mr. Bocchino was a sales agent, and there have been no further complaints filed against him with the Division. #RE 97-04-06

BUEHNER, PAUL W., Sales Agent, Salt Lake City. New license granted on probationary status, but suspended until December 1, 2001, because of the factors that led to the denial of his application for renewal in May, 2000: 1) violating the probationary status of his initial license with a Paraphernalia conviction; 2) failing to submit forms to properly transfer his license; and 3) failing to check whether a 1991 misdemeanor marijuana conviction was still on his record before failing to disclose it on his original application.

CAMALICHE, JOSEPH P. JR., Sales Agent, Holladay. License reinstated on probationary status until his next renewal because he withheld rent from owners of an apartment complex he managed and because of a series of confrontations with tenants and others. While his license is on probationary status, he will be required to complete classes on anger management and conflict resolution. He will also be required to provide the Division with written acknowledgement from any principal broker with whom he licenses that the broker has been informed about the probationary status of his license.

CARLSON, JIM, Broker, Sandy. License renewed on probationary status until his next renewal because of a "no contest" plea to a misdemeanor DUI charge.

COCHRANE, RANDY, Sales Agent, Sandy. License granted on probationary status because of a judgment against him in favor of a surety company that paid off on the security bond Mr. Cochrane was required to post to engage in the motor vehicle dealer business. While his license is on probationary status, he will be required to provide the Division with written acknowledgement from any principal broker with whom he licenses that the broker has been informed about the probationary status of his license.

DE LAY, BABETTE W., Certified Real Estate Instructor, Salt Lake City. Instructor certification surrendered as of September 30, 2001, and agreed not to apply for a new instructor certification before September 20, 2002, based on teaching

and giving out continuing education credit certificates for a course which she knew had an expired certification, giving out certificates that stated they were for a different course than the course actually taught, and misstating the number of hours of credit for the course with the intention to increase the appeal of the course to attendees.

EDMUNDSON, MALINDA M., Principal Broker, Sandy. Broker's license granted on condition that the license be on probationary status until the first renewal and on the condition that Ms. Edmundson attest in writing to having studied the real estate administrative rules within 60 days of becoming licensed as a broker.

FISH, JARED G., Sales Agent, Alpine. License granted on probationary status in light of his history of motor vehicle related misdemeanors.

GLEDHILL, THOMAS R., Sales Agent, Country West Construction & Real Estate, Inc., Clearfield. Consented to pay a \$1,000 fine, take the Division 2000 Core Course, and have his license placed on probation for one year. As a sales agent and the construction foreman for a builder, Mr. Gledhill was privy to and assented to a scheme where another sales agent signed documents acting as the purchaser of a trade-in home when the home was actually being taken in trade by the construction company. Mr. Gledhill maintains in mitigation that the sellers of the home did not lose any money on the transaction. In further mitigation, the Division has received no additional complaints against Mr. Gledhill. #RE 99-01-06

HAWS, JOAN A., Sales Agent, St. George. Application for renewal denied based on failure to comply with an order of the Real Estate Commission and the Division Director. Ms. Haws signed a stipulation agreeing to pay a fine in settlement of a disciplinary case, and then failed to pay the fine when due.

HIGLEY, EDWIN GREGORY, Principal Broker, Country West Construction and Real Estate, Inc., Clearfield. Agreed to a one-year suspension of license, which was stayed on the conditions that his license be on probationary status for one year, that he pay a \$2,000 fine, and that he take the 2000 Division Core Course in settlement of a complaint in which the Division alleged that he was privy to and assented to a scheme in which a sales agent falsely purported to be the buyer of a home. Mr. Higley neither admitted nor denied the Division's allegations. #RE99-01-05

JOHNSON, JOHN C., Inactive Sales Agent, Salt Lake City. License suspended for three months beginning May 16, 2001 and placed on probationary status thereafter for the balance of the renewal period, based on a misdemeanor conviction, and testimony before the Commission which was in conflict with his criminal record.

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R.E. Disciplinary Sanctions

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KURTZ, KEN W., Inactive Sales Agent, Salt Lake City. Agreed to surrender his license and not to apply for a new license for at least three years after he was convicted of Filing a False Income Tax Return and sentenced to three years probation and fined \$20,000.

MANIATIS, VASILIOS S., Sales Agent, Salt Lake City. Application for sales agent license approved on probationary status based on a past suspension of his real estate license in another state. During the probationary status, which will last until his first renewal, he must disclose the past licensing action to any principal broker with whom he licenses.

MILLAR, DOUGLAS D., Principal Broker, American Executives Group, West Jordan. Mr. Millar agreed to represent a buyer and to act as a limited agent in a transaction in which he was a general partner in the entity that was the seller of the property. Mr. Millar agreed to pay a \$500 fine based on breaching a fiduciary duty owed by a licensee to his principal in a real estate transaction, since he could not act in the neutral capacity of a limited agent in a transaction in which he was himself the seller of the property. Although the buyer's offer was never accepted, Mr. Millar refused to refund the earnest money deposit until after a complaint was filed with the Division. In mitigation, Mr. Millar then promptly drove to Ogden and hand-delivered a refund to the buyer. #RE01-04-03

MILNER, GLEN R., Principal Broker, International Real Estate Referral Co., LLC, Salt Lake City. Application for renewal denied based on lack of honesty and competency, including his "no contest" plea to a charge of 3rd Degree felony Securities Fraud and his inconsistent testimony concerning such plea.

REID, JESS L., Principal Broker, Jess

Reid Real Estate, Park City. Agreed to pay a \$500 fine for violating Utah Code Section 61-2-11(8), based on having filed an unauthorized Notice of Interest against real property in order to collect a real estate commission. Mr. Reid maintains in mitigation that a real estate agent licensed with Jess Reid Real Estate refused to pay a real estate commission that was due the brokerage on the sale of the agent's condominium, so he filed a Notice of Interest against the condominium. #RE99-11-19

REID, PEGGY L., Inactive Sales Agent, Richfield. Surrendered her license effective January 16, 2002 and agreed not to apply for a new license for at least five years, rather than continue to respond to the Division's investigation of Sixth District Court Case 011600247FS, in which she entered guilty pleas to six counts of felony forgery in connection with checks written on the account of the Central Utah Board of Realtors. #RE02-01-01

RICHARDS, GERALD E., Sales Agent, Coldwell Banker Residential Brokerage, Ogden. Application for renewal granted on condition that his license be suspended for one year and placed on probation for the balance of the licensing period for acting incompetently in a transaction and on entry of a civil judgment against him in a real estate transaction. After the suspension and during the probationary period, he must disclose the civil judgment and the probationary status of his license to any principal broker with whom he licenses.

SANDERS, RULON S., Principal Broker, Tax Advantage Investments, Orem. Agreed to pay a \$500 fine and attend the Division of Real Estate Trust Account Seminar, based on failing to exercise reasonable supervision of a brokerage. Mr. Sanders was employed by a sales agent to act as principal broker for a brokerage the sales agent owned. While the sales agent's license was on inactive status, she filled out a REPC, signed Mr. Sanders' name receipting earnest money, and deposited the funds to Mr. Sanders' trust

account. When the transaction failed, the sales agent told Mr. Sanders that she had given the file to her attorney to resolve the dispute over the earnest money. Mr. Sanders did maintain control of the funds when he left the brokerage shortly thereafter and, after the buyer filed suit in small claims court and the court awarded the earnest money to the buyer, he refunded the earnest money to the buyer. #RE97-12-05

SKINNER, EVAN S., Sales Agent, Montpelier, Idaho. Application for renewal denied, based on the May, 2000 suspension of his Idaho real estate license for: making a fraudulent misrepresentation by switching pages on a Seller Representation Agreement to substitute another broker as the listing broker; continued course of misrepresentation; failing to keep adequate records; failing to provide information requested by the Idaho Real Estate Commission staff; representing himself as a broker without a broker's license; agency violations; listing and selling property and failing to deliver those agreements to his broker; misleading the public by soliciting business for a new brokerage he intended to open while still licensed as a sales person for another; and attempting to obtain a commission outside the brokerage.

TIMOTHY, PAUL, Sales Agent, American Fork. Application for broker license denied, sales agent license placed on probation for one year, and fined \$2,000 based on acting as a principal broker before being licensed as a broker, and failing to inform his principal broker about pending transactions.

TURNER, KIMBERLY L., Sales Agent, Logan. Application for renewal denied based on a January, 2000 conviction of Class A Misdemeanor Communications Fraud, attempts to hide the offense when confronted by police, the fact that she had committed similar activity against an earlier employer, her failure to report the conviction to the Division, and her recent conduct of unlicensed activity.

WALTERS, SCOTT G., Sales Agent, Salem. License renewed on probation until his next renewal due to a misdemeanor conviction related to hunting. If he transfers his license while it is on probationary status, he will be required to provide the Division with written acknowledgement from his new principal broker that the broker has been informed about the conviction.

WARNER, GLEN B., Formerly Principal Broker, Property Exchange, LLC, Taylorsville. Renewal as a principal broker denied and a sales agent license issued in its place because of the surrender of his Idaho broker license while under investigation on allegations that he did not properly supervise salespersons in his Boise office.

WEBBER, STEVEN G., Branch Broker, Coldwell Banker Premier, Park City Office. License suspended for six months, beginning December 21, 2000, followed by probation of license until October, 2002, based on a guilty plea in abeyance to third degree felony Obtaining a Controlled Substance by Fraud in Third District Court in Salt Lake City. Mr. Webber requested Agency Review of the Commission's order and was granted a stay of the suspension pending the outcome of Agency Review. At the time of publication, Agency Review was still pending. #RE99-02-21.

WHITE, DAREN D., Inactive Sales Agent, Clinton. License renewed on probationary status for having received citations from the Division of Occupational and Professional Licensing and failing to disclose those citations or the denial of his contractor's license on his application for renewal of his real estate license.



Appraiser Disciplinary Sanctions

BRADY, JOHN, State Licensed Appraiser, Salt Lake City. Agreed to pay a \$1,000 fine and complete a USPAP course, and agreed not to apply for certification for at least one year after January 23, 2002, based on two complaints filed with the Division. In connection with one complaint, Mr. Brady admitted violating USPAP by picking unlike comparables and making improper adjustments while working under the supervision of a certified appraiser in 1998. In connection with the other complaint, Mr. Brady admitted to violating USPAP by failing to disclose his lack of competency to appraise a unique property consisting of a horse stable with a second floor residence above it situated on 22 riverfront acres, and by failing to take the necessary steps to become competent. #AP98-10-26, and AP20-03-04.

BURTON, CLYDE, State Certified Residential Appraiser, Clearfield. Agreed to pay a \$1,500 fine and complete a USPAP course in settlement of a complaint alleging that his appraisal of a property in Clearfield at \$121,000 was too high. The appraisal order stated, "Please get \$120,000." Mr. Burton denied that he intentionally inflated the appraisal, but admitted that his appraisal violated USPAP and that his search for comparable properties was probably influenced by having the \$120,000 figure in mind when he started his search. #AP99-11-11.

CARLSON, JILL B., Applicant for State Licensed Appraiser, South Jordan. Application for State Licensed Appraiser status denied by the Board on August 30, 2001. Ms. Carlson applied for judicial review of the denial of her application to the Second District Court. On November 28, 2001, the Second District Court Judge announced his ruling. In that announcement, the Judge denied Ms. Carlson's application for licensure, concluding that she had engaged in a pattern of conduct which showed either gross incompetence or intentional manipulation of the appraisal process resulting from a lack of truthfulness and integrity.

CHILDS, GRANT E., State Certified Residential Appraiser, Payson. Agreed to pay a \$2,500 fine and complete the 2002 USPAP course in settlement of several complaints filed with the Division. The Division's allegations included use of inappropriate methods, failing to verify the identity of the owner of a property or state the sales price and date of the sale, failing to report a sale that had occurred less than twelve months earlier, and valuing a property at \$360,000 that he had appraised three months earlier for \$290,000 without sufficient justification for the increase. #AP96-10-05, AP97-12-09, AP98-01-05, and AP01-08-17.

COON, TERRY V., State Certified Residential Appraiser, West Jordan. Agreed to pay a \$2,000 fine and complete a USPAP course and a course on appraising modular homes, based on two complaints in which Mr. Coon admitted USPAP violations. One complaint alleged a failure to analyze a prior sale. The other complaint alleged that in the appraisal of a manufactured home he made improper adjustments and used improper methods (picking unlike comparables which were framed dwellings and not manufactured homes). #AP20-01-19, and AP10-06-17.

DAVIS, RICHARD W. State Certified Residential Appraiser, Provo. Certification surrendered effective December 13, 2001 rather than continue to respond to the Division's investigation of four complaints. Mr. Davis neither admitted nor denied the allegations in those complaints. Mr. Davis indicated that he plans to retire from the appraisal industry and that if he decided to resume appraising, he would not apply for a new appraiser license or certification for at least five years. If he applies for a new license or certification in the future, he will not be able to submit experience credit any appraisals done prior to the date of the surrender of his certification. #AP98-01-06, AP99-11-03, AP20-07-04, and AP20-11-15.

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Appr. Disciplinary Sanctions

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EARL, JACK L., State Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$1,000 fine and complete a USPAP course, based on violating USPAP in an appraisal by selecting unlike comparables, failing to address the super adequacy of the subject, and missing a \$13,500 seller concession on one of the comparables. Mr. Earl maintained in mitigation that he was very impressed by the subject property's view and amenities, and that another appraiser had appraised the home for almost as much 2 ½ years earlier. #AP20-10-09.

ELLIS, DENISE B., State Certified Residential Appraiser, Bountiful. Application for renewal denied by the Board on August 30, 2001. Ms. Ellis applied for judicial review of the denial of her renewal to the Second District Court, which issued a stay of the Board's Order and allowed Ms. Ellis to continue appraising pending the outcome of the District Court review provided she appraised under the supervision of another certified appraiser to be approved by the Division. The Division issued Ms. Ellis the restricted certification on September 24, 2001. On November 28, 2001, the Second District Court Judge announced his ruling. In his announcement, the Judge denied Ms. Ellis's application for renewal, and stated that he had engaged in a pattern of misconduct which showed either gross incompetence or intentional manipulation of the appraisal process resulting from a lack of truthfulness and integrity. The Court directed the Division to terminate the restricted certification of Ms. Ellis effective November 29, 2001.

ELLSWORTH, D. DELOS, State Certified General Appraiser, Provo. In lieu of continuing to respond to the Division's investigation of a complaint, Mr. Ellsworth surrendered his rights in connection with his application for renewal and agreed not

to apply for a new license or certification from the Division for at least two years. He also agreed that he will not work in the appraisal business in an unlicensed capacity for the same period of time. #AP99-09-01.

EVANS, CHRISTOPHER J., State Certified Residential Appraiser, Orem. Surrendered his certification effective January 23, 2002, and agreed not to reapply for at least two years rather than continue to respond to the Division's investigation of cases AP20-07-03, AP20-11-16, AP01-08-51, and AP01-08-53.

JEWKES, LORRI, Applicant for State Licensed Appraiser, South Jordan. Application for State Licensed status denied effective August 30, 2001 after a hearing before the Utah Appraiser Licensing and Certification Board at which Ms. Jewkes did not appear. The denial of the application was based on the Board's determination that while Ms. Jewkes was a registered appraiser, she violated USPAP Standards Rules 1-1, 1-2, 1-4, and 1-5, and the Ethics Rule sections pertaining to Conduct, Confidentiality, and Record Keeping, and that she also violated the Competency Rule.

JORGENSEN, GENE C., State Certified Residential Appraiser, West Jordan. Agreed to pay a \$1,000 fine, complete a USPAP course, and agreed not to sign for or supervise any other appraiser for two years in settlement of a complaint alleging that in an appraisal in which he acted as the supervisory appraiser for his son, they used an unusually high sight value, improperly performed the cost analysis, and that the comparable sales that were used were distant from the subject property, although closer and

more similar comparables were available. #AP99-07-13.

KNAPHUS, LOREN K., State Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$2,000 fine, complete an educational requirement, and agreed not to supervise or sign for any other appraisers or unclassified persons working in the appraisal business for two years starting January 23, 2002. Mr. Knaphus admitted violating USPAP by failing to properly train and supervise registered appraisers who performed the appraisals involved in complaints filed with the Division. #AP98-06-16, AP988-06-22, AP01-04-18, and AP01-03-28.

KOPLIN, RICHARD W., State Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$2,000 fine and complete a USPAP course in settlement of two complaints filed with the Division. One complaint involved a series of errors that, although individually might not affect the results of the appraisal, in the aggregate might affect the credibility of the results. Mr. Koplin maintains in mitigation that the errors were due to technical problems with his software. In the other complaint, he failed to report listing and sales history and missed a concession on a comparable. In mitigation, the errors did not seriously affect the valuation. #AP99-04-01 and AP01-07-01.

TRUST ACCOUNT SEMINAR

The seminar will cover the Administrative Rules for trust accounts established under the Utah Real Estate license law. (Taught Live)

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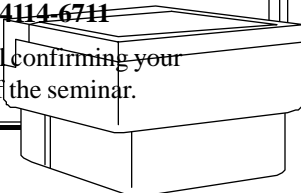
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KRANSTOVER, WILLIAM J., State Certified General Appraiser, Park City. Mr. Kranstover admitted violation of USPAP in two complaints and agreed to pay a \$1,000 fine and take a USPAP course, and that he will not sign for, or supervise other appraisers, appraiser trainees, or unclassified persons for two years. In one complaint, the lot value and the improvements were substantially overstated. In the other complaint, Mr. Kranstover inadequately trained and supervised a registered appraiser who signed numerous appraisals that were in significant violation of USPAP. Mr. Kranstover also failed to physically inspect the subjects of those appraisals. #AP20-05-14, and AP97-04-19.

LARSEN, ROBERT E., State Certified Residential Appraiser, Draper. Agreed to complete a USPAP class and a reproduction cost class in settlement of a complaint filed against him by a review appraiser who alleged, among other things, that Mr. Larsen had failed to make an analysis of the subject property's listing history. In mitigation, Mr. Larsen has been a State Certified Residential Appraiser since 1990 and this was the first complaint filed against him with the Division. #AP01-03-14.

MESSER, DAVID J., Applicant for State Licensed Appraiser, Delta. Agreed to pay a \$1,500 fine in settlement of two cases involving appraisals he completed when he was a State Registered Appraiser. Mr. Messer admitted that the two appraisals at issue, which were done in 1996 and 1997, violated USPAP, but maintained in mitigation that the violations were unintentional and a result of his inexperience and the poor supervision he received from his certified appraiser. The allegations in the complaints included improper cost approach, poor selection of comparables and poor determination of effective age, among other allegations. Mr. Messer will be allowed to sit for the Certified Residential Appraiser exam once he has completed a USPAP course. #AP99-02-18.

RAFINER, LARRY L., State Certified Residential Appraiser, Pleasant Grove. Mr. Rafiner admitted violating USPAP by making a series of careless or negligent errors and agreed to pay a \$1,000 fine and complete a USPAP course. The complaint involved an appraisal in which he neglected to mention the listing history of the subject property or a seller concession on one of the comparables and in which he inaccurately reported the sales price of another of the comparables. #AP01-08-45.

ROSS, BRUCE, State Certified Residential Appraiser, Salt Lake City. Expired certification reinstated effective January 23, 2002 on the following conditions: 1) Certification suspended immediately with the suspension stayed; 2) Certification placed on probation for two years, during which time he shall not supervise or sign for any other appraiser; 3) Completion of an educational requirement; and 4) Payment of a \$3,500 fine. This stipulated settlement resolves the Petition filed by the Division in Case AP98-04-13 as well as seven additional complaints filed with the Division. Mr. Ross admitted violation of USPAP Standards Rules 1-1(a), 1-1(b), 1-1(c), and 1-4(b)(iii) in connection with Case AP98-04-13.

WHITAKER, WILLIAM A., State Licensed Appraiser, Park City. Agreed to pay a \$1,000 fine in settlement of a complaint involving an appraisal that violated USPAP. Mr. Whitaker's appraisal was done when he was a relatively new registered appraiser. He lacked the necessary expertise to complete the assignment, which used improper methods and contained numerous errors. In mitigation, Mr. Whitaker has taken 62.5 hours of appraisal courses since the time of the appraisal and has had no further complaints filed against him. In further mitigation, Mr. Whitaker maintains that the certified appraiser who supervised him failed to train him or to supervise the appraisal. The certified appraiser is no longer appraising, having surrendered his certification in connection with this and other appraisals. #AP20-03-02.

ZARATE, ALEX, State Certified Residential Appraiser, Sandy. Application for renewal denied effective November 13, 2001. Rather than continue to respond to the Division's investigation of three complaints, Mr. Zarate agreed that his renewal would be denied, that he would not work in the appraisal industry for two years, and that he would not apply for a new appraiser license or certification for at least two years. In one appraisal, Mr. Zarate showed as the current owner of the property an individual who was not the owner, but who had contracted to purchase the property. The other two complaints alleged that Mr. Zarate appraised the two properties in question for substantially in excess of the listing prices and the sales prices reported to the MLS. #AP20-12-11.

In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Linda L. Bolinder
William L. Foster
Dale Howell
Carol Kimball
Larry L. Larson
William C. Livingston
Jan F. Maxfield
G. Boyd Murdock
Clem Oberhansly
James G. Winder

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